

PLANNING DEPARTMENT - BOARD OF ADJUSTMENT

REVISED ACTION SHEET

TO: John P. Bohenko, City Manager

FROM: Mary Koepenick, Planning Department

RE: Actions Taken by the Portsmouth **Board of Adjustment regular meeting** on April 15, 2008 in the Eileen Dondero Foley Council Chambers, Municipal Complex, 1 Junkins Avenue, Portsmouth, New Hampshire

PRESENT: Chairman Charles LeBlanc, Vice-Chairman David Witham, Carol Eaton, Thomas Grasso, Alain Jousse, Charles LeMay, Arthur Parrott, Alternates: Derek Durbin, Robin Rousseau

EXCUSED: None

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I. OLD BUSINESS

A) Approval of Minutes – March 18, 2008

A motion was made, seconded, and passed by unanimous voice vote to accept the Minutes as presented.

B) Request for a One-Year Extension of Variance, granted May 15, 2007, for property located at **227 Market Street**.

After consideration, the Board voted to grant the Variance Extension through May 15, 2009.

C) Request for a One-Year Extension of Variances granted March 28, 2006 (upholding variances granted December 17, 2002 and clarified on November 15, 2005) and affirmed by the Supreme Court of the State of New Hampshire by order issued May 30, 2007 for property located **Off Kearsarge Way**.

After consideration, the Board voted to grant the Variance Extension through May 30, 2009.

II. PUBLIC HEARINGS

1) Petition of **Robert N. and Kathleen M. Dockham, owners**, for property located at **206 Dennett Street** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow: a) a previously constructed two story addition creating 26.8%± building coverage where 25% is the maximum allowed, and b) a 10' x 28' open deck creating 30.5%± building coverage where 25% is the maximum allowed. Said property is shown on Assessor Plan 143 as Lot 5 and lies within the General Residence A district.

After consideration, the Board voted to grant part a) of the petition as presented and advertised for the following reasons:

- It will not be against the public interest to preserve an already built addition.
- The special conditions include the fact that the addition is already constructed and that the change in lot size was only discovered by a later survey.
- There is no way to bring the property into compliance without completely modifying the building.
- Justice would be served by recognizing an already built structure.
- Adjacent properties will not be affected by a building less than 2% larger than that required by the Zoning Ordinance.

The Board voted to deny part b) of the petition for the following reasons:

- The proposal would raise the building coverage considerably over what is allowed.
- There was no demonstrated hardship in the land which would justify granting a variance.
- The stated purpose for the deck was to gain rear access, which could be accomplished by another method.

2) Petition of **Two Girls Realty LLC, owner, Laminda Puckett d/b/a The Red Ginger, applicant**, for property located at **261 South Street** wherein a Variance from Article IX, Section 10-908 Table 14 was requested to allow a 14.25± sf free-standing sign in a district where business signs are not allowed. Said property is shown on Assessor Plan 111 as Lot 34-2 and lies within the General Residence B and Historic A districts.

After consideration, the Board voted to grant the petition as presented and advertised for the following reasons:

- It is in the public interest to allow a business to advertise its location.

- There is no relationship between the zoning and the restriction on the property as the Board has previously granted a non-conforming use in this district.
 - The public and private rights of others will not be injured and justice will be served by allowing a sign similar to that used in the past.
 - There is no other place to put a sign than the proposed location.
 - There is no indication that surrounding property values would be diminished and neighbors have signed a petition of support.
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3) Petition of **Nicholas J. Cassotis, owner**, for property located at **151 Stark Street** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow a 12' dormer on the left rear portion of the roof on an existing building with a 0' left side setback where 10' is the minimum required. Said property is shown on Assessor Plan 159 as Lot 43 and lies within the General Residence A district.

After consideration, the Board voted to grant the petition as presented and advertised with the following stipulation:

- That the vertical wall where the dormer will be located will remain windowless.

The petition was granted for the following reasons:

- This will not affect the public interest and no one has spoke in opposition.
 - A hardship would be created by denying the homeowners a little more usable space.
 - With the house already on the property line, any change would require a variance.
 - This corner of the house was chosen for the dormer as it allowed the best access and it would be difficult and expensive to locate it elsewhere.
 - There is no benefit to the public that would outweigh the hardship on the homeowner if the petition were denied.
 - Surrounding property values will not be negatively affected by this minimal request.
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4) Petition of **Holly Hunter and Daniel T. Gair, owners**, for property located at **369 Wibird Street** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow: a) a 4'6" x 7' front porch with 7'3"± front setback and a 75 sf side entry and steps with a 10'4"± front setback where 15' is the minimum required in each instance, and b) 31.7%± building coverage (including a 120 sf rebuilt rear deck, 7.5 sf kitchen bay addition and 34 sf rebuilt bulkhead) where 25% is the maximum allowed. Said property is shown on Assessor Plan 132 as Lot 17 and lies within the General Residence A district.

After consideration, the Board voted to grant the petition as presented and advertised for the following reasons:

- The design is tasteful and would not be contrary to the public interest.
- With the front of the house encroaching into the setback and considering how the house sits on the lot, any necessary work would require a variance.
- There is no other method to replace what is needed.
- It is in the spirit of the ordinance to allow the property owner to improve their property with only a slight increase over the existing lot coverage.
- Justice would be served by allowing replacement of a deck and stairs that are in disrepair.
- The value of neighboring properties will not be diminished by these improvements.

5) Petition of **Christina Jane Ljungberg c/o Jane A. Stadler**, owner, for property located at **47 South Street** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow an irregular shaped 144 sf deck over an existing lower level deck with a 6' ± right side setback where 10' is the minimum required. Said property is shown on Assessor Plan 102 as Lot 51 and lies within the General Residence B and Historic A districts.

After consideration, the Board voted to grant the petition as presented and advertised for the following reasons:

- With the rear location of the deck abutting the water, no public interest will be affected.
- The special conditions are the proximity of the pond and the placement of the house on the lot which limit the possibilities for deck expansion.
- It is in the spirit of the ordinance to allow homeowners reasonable use of their property without increasing their footprint or setbacks.
- There will be no benefit to the public in denying this petition.
- Surrounding property values will not be diminished by the addition of this deck, which is similar to those on abutting properties.

6) Petition of **A. B. Kelly Property Trust, William Ashley and Ann Vick Kelly**, owners, for property located at **306 Oriental Gardens** wherein a Variance from Article II, Section 10-209 was requested to allow the replacement of a 12' x 63' manufactured home in the same location with a new 13'4" x 66' manufactured home in a district where manufactured homes are not allowed. Said property is shown on Assessor Plan 215 as Lot 9 and lies within the Office Research district.

After consideration, the Board voted to grant the petition as presented and advertised for the following reasons:

- It is in the public interest to replace a dilapidated structure with a new one which meets the codes.
- The zoning restriction interferes with the landowner’s reasonable use of the property as the rest of the property contains many similar homes.
- The use remains the same so the public and private rights of others will not be affected.
- The spirit of the ordinance will be served and justice done by allowing what is, essentially, a replacement in kind.
- Surrounding property values will not be diminished by a new, improved structure.

7) Petition of **William Genimatas Revocable Trust of 1990, Nicolas Genimatas Trustee, owner, AAA Northern N.E., applicant**, for property located at **599 Lafayette Road** wherein a Variance from Article IX, Section 10-908 was requested to allow 472.24 sf of attached signage where 404 sf of attached signage is allowed. Said property is shown on Assessor Plan 229 as Lot 8 and lies within the General Business district.

After consideration, the Board voted to grant the petition with the following stipulation:

- That the granted signage will not exceed 425.74 s.f., to be placed entirely on the front of the building. The proposal to place signage on the side of the building was denied, with the exception of 9 s.f. allowed to be added to the front sign, “Travel & Insurance”.)

The petition was granted for the following reasons:

- A sign of a reasonable size will direct the public without providing a distraction.
- The special conditions resulting in a hardship are the relatively small size of the building and the number of different businesses, all requiring a sign.
- There is no other substitute for a sign to direct the public to the business.
- A sign that is not garish or overwhelming will be in the spirit of the ordinance.
- There is no benefit to the public in denying the petition that would outweigh the hardship to the property owner in not being able to identify the business.
- Consistent in style, placement and size with existing signs, the sign will not negatively impact the value of surrounding properties.

8) Petition of **Jay Edwards, owner, Coastal Truck & Auto Body, Inc applicant**, for property located at **3612 Lafayette Road** wherein a Special Exception as allowed in Article II, Section 10-208(36) was requested to allow the repair of school buses inside the

existing building. Said property is shown on Assessor Plan 297 as Lot 3 and lies within the General Business and Industrial districts.

After consideration, the Board voted to grant the petition as presented and advertised for the following reasons:

- Performing the same operation currently being done on the abutting property will present no hazard to the public or adjacent properties.
- With vehicle movement only from one property to the other, there will be no increase in traffic congestion.
- Expanding a current use to the adjoining building will not change the essential characteristics of the area or result in an excessive demand on municipal services.
- With no work proposed to be done in the exterior of the property, there will be no increase in storm water runoff.

9) Petition of **Drew Santa Barbara, owner**, for property located at **84 Leslie Drive** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow: a) an existing 360 sf irregular shaped carport to be enclosed and a 14' x 14' rear addition to the carport with a 6'6"± left side setback where 10' is the minimum required, and b) a 12' x 14' deck and a 4' x 10' front porch creating 22.5%± building coverage where 20% is the maximum allowed. Said property is shown on Assessor Plan 209 as Lot 64 and lies within the Single Residence B district.

After consideration, the Board voted to grant the petition as presented and advertised for the following reasons:

- Enclosing an existing carport and adding a deck and small porch will not negatively impact the public interest.
- The special condition is the irregular shape of the lot so that the rear corner of the existing carport extends into the setback.
- The deck and porch increase the building coverage only slightly.
- With the shape of the lot and existing structures, there is no other method to achieve the aims of the property owner.
- It will be in the spirit of the ordinance and justice will be served by allowing structures similar to others in the neighborhood, while removing vehicles from the street.
- A more attractive house, with a full, usable garage will, if anything, contribute to an increase in surrounding property values.

10) Petition of **Ann N. Grimbilas Revocable Trust, Ann N. Grimbilas Trustee, owner**, for property located at **525 Ocean Road** wherein Variances from Article III, Section 10-302(A) and Article IV, Section 10-401(A)(2)(c) were requested to allow a 10'

x 20' deck to be rebuilt with: a) a 39'± rear yard where 40' is the minimum required, and b) 13.7%+ building coverage where 10% is the maximum allowed. Said property is shown on Assessor Plan 283 as Lot 16 and lies within the Single Residence A district.

After consideration, the Board voted to grant the petition as presented and advertised for the following reasons:

- A 1' incursion into the rear yard setback will not affect the public interest.
 - The deck will simply replace in kind one that has existed for some time and has fallen into disrepair.
 - It is not reasonably feasible to relocate the deck to another location, changing access doors.
 - It is in the spirit of the ordinance to allow a homeowner reasonable enjoyment of their property.
 - There is no benefit to the public in denying the variances.
 - Surrounding property values will not be negatively affected by this improvement.
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III. ADJOURNMENT

It was moved, seconded and passed to adjourn the meeting at 9:10 p.m.

Respectfully submitted,

Mary E. Koepenick, Secretary